



FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request;

Extension

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (“PRA”), the Federal Trade Commission (“FTC” or “Commission”) is seeking public comment on its proposal to extend for an additional three years the FTC’s portion of the information collection requirements contained in the rules implementing the Hart-Scott-Rodino Antitrust Improvements Act (“HSR Rules”) and corresponding Notification and Report Form for Certain Mergers and Acquisitions (“Notification and Report Form”). The current clearance expires on January 31, 2023.

DATES: Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Request for Comments part of the SUPPLEMENTARY INFORMATION section below. Write “Paperwork Reduction Act Comment: FTC File No. P072108” on your comment, and file your comment online at <https://www.regulations.gov> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Robert L. Jones, Assistant Director, Premerger Notification Office, Bureau of Competition, Federal Trade Commission, Room CC-5301, 600 Pennsylvania Avenue NW, Washington, DC 20580, or by telephone to (202) 326-

SUPPLEMENTARY INFORMATION:

Title: HSR Rules and Notification and Report Form, 16 CFR parts 801-803.

OMB Control Number: 3084-0005.

Type of Review: Extension of a currently approved collection.

Abstract: Section 7A of the Clayton Act (“Act”), 15 U.S.C. 18a, as amended by the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Public Law 94–435, 90 Stat. 1390, requires all persons contemplating certain mergers or acquisitions to file notification with the Commission and the Assistant Attorney General and to wait a designated period of time before consummating such transactions. Congress empowered the Commission, with the concurrence of the Assistant Attorney General, to require “that the notification . . . be in such form and contain such documentary material and information . . . as is necessary and appropriate” to enable the agencies “to determine whether such acquisitions may, if consummated, violate the antitrust laws.” 15 U.S.C. 18a(d). Congress similarly granted rulemaking authority to, among other things, “prescribe such other rules as may be necessary and appropriate to carry out the purposes of this section.” *Id.* Pursuant to that section, the Commission, with the concurrence of the Assistant Attorney General, developed the HSR Rules and the corresponding Notification and Report Form.

Likely Respondents: Merging Parties.

Estimated Annual Hours Burden: 264,947 hours [derived from 7,160 non-index filings x 37 hours each) + (12 index filings x two hours each) + (one withdrawn transaction later restarted x three hours)].

Estimated Annual Cost Burden: \$121,875,620, which is derived from \$460/hour x 264,947 hours.

As required by section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), the FTC is providing this opportunity for public comment before requesting that OMB extend the existing

clearance for the information collection requirements contained in the HSR Rules and corresponding Notification and Report Form.

Burden Statement

The following burden estimates are primarily based on FTC data concerning the number of HSR filings and FTC staff's informal consultations with leading HSR counsel for outside parties.

Estimated Total Annual Hours

In fiscal year 2022, FTC staff estimates that the FTC will receive a total of 6,580 non-index filings.¹ Based on an average annual increase in filings of 4.3% in the pre-COVID fiscal years 2017-2019, FTC staff projects an average of 7,160 non-index filings per year for fiscal years 2023-2025, the time period for which PRA clearance will be requested from OMB.² For index filings, FTC staff projects an average of 12 index filings for fiscal years 2022-2025, based on a rough average of 12 such filings per year over fiscal years 2017-2019. Retaining prior assumptions, FTC staff estimates that non-index filings require, on average, approximately 37 hours per filing and that index filings require an average of two hours per filing.³

On rare occasions, a transaction for which the HSR filing is automatically withdrawn during the merger review process (due to the parties' Securities and Exchange Commission filing indicating that the transaction has been terminated) could be subsequently restarted. Based on experience to date, this would occur approximately once every fifteen years, i.e., a historical

¹ The estimate is based on actual data for the first three quarters of fiscal year 2022 and a projected number of filings for the last quarter that is the average of the number of filings received in the second and third quarter of fiscal year 2022. The second FR Notice will have the actual number of filings for fiscal year 2022, and all calculations based on the projected number of filings for fiscal year 2022 will be updated accordingly.

² Due to the exceptional volatility in the number of filings in fiscal years 2020 and 2021, data for these years was not included in the estimation of the annual growth rate of filings.

³ Index filings pertain to certain transactions described in Sections 7A(c)(6) and (c)(8) of the Clayton Act that are subject to the approval of other agencies and are exempt from the requirements of the premerger notification program. Index filings are incorporated into the FTC's currently cleared burden estimates, because the parties to these exempt transactions must file copies of the information submitted to the other agencies with the Commission and the Assistant Attorney General. However, the task of filing a copy of information provided to another agency requires significantly less time than the preparation of a filing for a non-exempt transaction.

frequency of 0.067 transactions per year. FTC staff believes that this new filing would require the same work and diligence as any new non-index filing. Assuming, then, an average of 37 hours for one transaction, when applied to a historical frequency of 0.067, this amounts to an annual average of three hours, rounded up, for a withdrawn transaction later restarted.

Thus, the total estimated hours burden is 264,947 hours [(7,160 non-index filings x 37 hours each) + (12 index filings x two hours each) + (one withdrawn transaction later restarted x three hours))].

Estimated Total Annual Labor Cost

Using the burden hours (264,947) estimated above and applying an estimated average of \$460/hour for executive and/or attorney compensation, FTC staff estimates that the total labor cost associated with the HSR Rules and the Notification and Report Form is approximately \$121,875,620.

Estimated Total Annual Non-Labor Cost

The applicable requirements impose minimal start-up costs, as businesses subject to the HSR Rules generally have or obtain necessary equipment for other business purposes. Staff believes that the above requirements necessitate ongoing, regular training so that covered entities stay current and have a clear understanding of federal mandates, but such training would be subsumed within the ordinary training that employees receive.

Request for Comments

Pursuant to Section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of maintaining records and providing disclosures to consumers. All comments must be received on

or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

You can file a comment online or on paper. For the FTC to consider your comment, we must receive it on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Write “Paperwork Reduction Act Comment: FTC File No. P072108” on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including the <https://www.regulations.gov> website.

Due to the public health emergency in response to the COVID-19 outbreak and the agency’s heightened security screening, postal mail addressed to the Commission will be subject to delay. We encourage you to submit your comments online through the <https://www.regulations.gov> website.

If you prefer to file your comment on paper, write “Paperwork Reduction Act Comment: FTC File No. P072108” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC–5610 (Annex J), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will become publicly available at <https://www.regulations.gov>, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else’s Social Security number; date of birth; driver’s license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as

medical records or other individually identifiable health information. In addition, your comment should not include any “trade secret or any commercial or financial information which . . . is privileged or confidential” —as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2) —including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at www.regulations.gov, we cannot redact or remove your comment unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

Josephine Liu,

Assistant General Counsel for Legal Counsel.

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